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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

No. 270

THE HENRIETTA MILLS, COMPLAINANT-APPELLANT,

versus

RUTHERFORD COUNTY, IN THE STATE OF NORTH CAROLINA, AND W. C. HARDIN, SHERIFF, DEFENDANTS-APPELLEES.

BRIEF OF DEFENDANTS-APPELLEES.

CLYDE R. HOEY,
Counsel for Defendants-Appellees.
FRED D. HAMRICK,
N. C. HARRIS,
J. S. DOCKERY,
Of Counsel.

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BRIEF ON BEHALF OF RUTHERFORD COUNTY AND W. C. HARDIN, DEFENDANTS-APPELLEES.

Statement of the Facts.

This controversy involves the assessment for taxation of the property of the Henrietta Mills, the complainant, for the year 1927, by the Board of Tax Assessors of Rutherford County, the Board of Equaliza-

tion and Review of Rutherford County, and the State Board of Assessment of North Carolina.

The Henrietta Mills is a corporation in Rutherford County and the property consists of cotton mills, located at Caroleen and Henrietta, together with the buildings, warehouses, storebuildings, machinery, tenement-houses and other property which comprises almost wholly the two mill villages.

Proceedings Before County Tax Board.

Under date of April 2, 1927, the Henrietta Mills filed its tax return and listed its real estate, machinery, buildings and tenement-houses at the sum of $1,373,768, and the assessment on this property was fixed by the Board of Assessors of Rutherford County at $2,124,235. The Henrietta Mills listed its personal property at $513,584.00 and this valuation was accepted by the County Board of Tax Assessors and remains unchanged. On July 2, 1927, the Henrietta Mills was notified of the valuation and assessment made by the Board of Tax Assessors of Rutherford County and on Monday, July 11, 1927, the Board of Supervisors and the Board of County Commissioners of Rutherford County convened as a Board of Equalization and Review at Rutherfordton, N. C., after giving notice as required by law, and remained in session until July 15, 1927, and heard complaints of all parties who desired to make objections to the assessment of their property and during these days heard and passed upon some seventy different complaints (R. p. 34). Al-

though the Henrietta Mills received notice on July 2, 1927, of the assessment made, no exception or objection was filed with the Board of Equalization and Review until after the time for filing complaints or exceptions had passed (R. pp. 100-106), said time being limited by statute to July 15, 1927 (P. L. 1927, ch. 71, Sec. 109) (N. C. Code 1927, Sec. 7971 (89)). On July 18, 1927, there was filed the paper, which appears in the pleadings, in which objection was made to the assessment.

Proceedings Before State Tax Commission.

On July 29, 1927, the Henrietta Mills appealed to the State Board of Assessment from the valuation placed upon said property by the Board of Assessors of Rutherford County. After due notice the State Board of Assessment heard said matter in the city of Raleigh, N. C., on October 19, 1927, and it was agreed before said State Board of Assessment that there was no controversy as to valuation placed upon the personal property, the same having been listed for taxation and accepted at $513,584.00, and that the only controversy between the parties was over the value of the real estate, which included machinery, buildings, tenement-houses, etc. (See Sec. 11 of Stipulation, R., p. 138.) After the offering of evidence, both written and oral, the argument of counsel and full consideration of the matter (R., p. 134), the State Board of Assessment finally rendered judgment reducing the assessment on said real estate, machinery, buildings, tenement-houses from $2,124,235.00 to $1,849,235.00, making a reduction

of $275,000.00 from the assessment thereon made by the Board of Assessors of Rutherford County. This was certified to the proper tax officials of Rutherford County and said real estate, machinery, buildings and tenement-houses of the Henrietta Mills was placed on the tax books of Rutherford County at said value and taxes levied upon said assessment, as provided by law.

In the bill of complaint and in the Brief of the complainant, the complainant has confused the valuation of real estate of the Henrietta Mills with the valuation of personal property. On the original tax return of the Henrietta Mills the complainant (R., p. 96) listed its personal property for taxation at a valuation of $513,584.00, which valuation was accepted by the taxing authorities of Rutherford County; and by reference to stipulation, shown on page 138 of the record, it will be seen that the parties agreed that the valuation of the personal property was not in controversy and that the only matter in dispute between the parties is as to the valuation of the real estate, machinery, buildings and tenement-houses of the complainant.

In the original tax return filed by the Henrietta Mills for the purposes of taxation, which tax return was made out by an officer of the company without consultation with any of the taxing authorities of the county, the complainant listed said real estate, machinery, buildings and tenement-houses at a valuation of $1,373,768.00 and the personal property, as aforesaid, at a valuation of $513,584.00.

To show the inconsistency of the complainant, it now contends that the combined value of its real and per-

sonal property for taxing purposes should be placed, not at the sum of $1,877,352.00 (the amount at which they voluntarily listed said property for taxation), but at a combined valuation of $1,132,411.20.

The real property which complainant listed on its tax return for the year 1927 at a valuation of $1,373,-768.00 had been assessed for taxation for a number of years previous to 1927 at a valuation which was more than $800,000.00 in excess of the amount at which complainant listed said property for taxation for the year 1927.

The complainant has brought this action and alleges that its property is excessively valued and that it is higher proportionately than other property in Rutherford County and that it is discriminated against in the matter of the assessment and seeks to have this Court enjoin the collection of the taxes levied against it. The complainant offers, in support of its contention, affidavits setting forth that its machinery is old and has been used for some time and that, in the opinion of the makers of the affidavits, the property does not possess the cash value to justify the assessment which has been levied. Other affidavits have been offered tending to show that conveyances of real estate in Rutherford County during the year 1927 revealed that a large number of sales of property have been made at a recited consideration greater than the said property was assessed for taxes. The complainant further offers affidavits with reference to the sale by W. S. Forbes in October, 1926, of stock in the Henrietta Mills at less

than $100.00 per share. The complainant further alleges that other real estate in Rutherford County is assessed at about 60 per cent of its value and claims that its property is assessed at 100 per cent of its value and alleges that the assessment was arbitrarily made and that it involves discrimination against it and, therefore, seeks injunctive relief under the provisions of the Federal Constitution.

The defendants show by their testimony that this identical property was assessed by experts representing the State of North Carolina in the year 1920, when all real estate, as well as mill property, was reassessed, and that at said date the experts in appraising mill property assessed the physical property of the Henrietta Mills at $2,400,000.00 (R., p. 109), which property is now only assessed for taxation in Rutherford County, after the reduction granted by the State Board of Assessment, at $1,849,235.00 (R., p. 129), even though since 1920 there have been large additions and improvements made to the property of the Henrietta Mills. That for the year 1920 the Henrietta Mills property was placed on the tax books of Ruthford County, in accordance with the assessment made by the State Tax Commission, to wit, at the sum of $2,400,000.00 for the lands, buildings, machinery and tenement-houses and taxes were paid by the complainant at this rate without objection.

In 1921 the Board of Commissioners of Rutherford County made a 10 per cent reduction in the assessment of all property in the county (R., p. 101), and this ap-

plied to the complainant and said property was correspondingly reduced 10 per cent. The complainant's property for 1923 was valued at $2,160,000.00; for 1924 at $2,180,880.00; for 1925 at $2,180,800.00; for 1926 at $2,180,800.00 (R., p. 109). The above represents the assessments of those years upon the real estate, machinery, buildings, and tenement-houses of the Henrietta Mills and there was no objection to said assessments for any of those years, notwithstanding the fact at the time these assessments were made the parties who then owned the controlling stock in, and were officers of, the Henrietta Mills were residents of Rutherford County and were familiar with tax values generally in the county, and there was no complaint of either over-assessment or discrimination (R., p. 109). The same property is now, for the year 1927, assessed at only $1,849,235.00, which is $351,565.00 less than the assessment for the preceding year of 1926.

The defendants show by affidavits that there has been no discrimination against the complainant in the assessment of its property; that, as compared with the other cotton mills in Rutherford County, its property is assessed lower proportionately, and that all of said property in Rutherford County has been assessed in the honest, conscientious judgment of the assessors at its real true cash value. By way of comparison, affidavits disclose that the Henrietta Mills have the lowest assessment per spindle of any similar mills in Rutherford County, its assessment being only $24.62 per spin-

dle, whereas the Spencer Mills is $28.03 per spindle; the Florence Mills, $33.63 per spindle; the Cliffside Mills, $33.48 per spindle, and the Alexander Mills, $50.06 per spindle. (See affidavits, R., pp. 97-128, inclusive.)

The defendants show by affidavit of W. G. Harris (R., pp. 97-100), accompanied by the prospectus of the Henrietta Mills issued by Independence Trust Company, Charlotte, N. C., for a bond sale of said mills as of January 1, 1922, that this corporation at that time represented that its three mills, consisting of Henrietta Mills No. 1, at Henrietta, and Henrietta Mills No. 2, at Caroleen, and the property of Cherokee Falls Manufacturing Company, at Cherokee Falls, S. C., had all been assessed for taxation at the sum of $3,405,409.00. This also shows that the complainant was carrying fire insurance on said properties at that time totaling $5,627,240.00. This prospectus further asserts that on a valuation of $30.00 per spindle, which it maintains would be far below replacement value and regarded as a most conservative estimate by mill people, that these three mills would be worth $3,090,600.00. This prospectus further asserts that the physical properties of all these mills are in the best of condition and that practically all of the early machinery has been replaced during the last five or six years with thoroughly modern equipment. An examination of this prospectus, which appears on pages 97 to 100 of the record, will disclose that the two mills located in Rutherford County represent the bulk of the value of these plants

and the details covering the physical equipment of said mills is set forth on page 99 of the record.

The defendants show, by affidavits, that the assessments have been fairly and honestly made on all property in Rutherford County and that it is untrue that the property generally has been assessed at 60 per cent of its value or that there was any understanding, agreement or purpose to assess the property at less than its true cash value (R., pp. 120-125). They also explain by affidavit the fact that the recited consideration in various deeds recorded for property sold during the year 1927 frequently includes a consideration greater than paid, and in a large number of instances cited the property was sold on long time and would not bring anything like that sum for cash (R., p. 111), and it is further shown by affidavit that a large part of the farm land of Rutherford County is now assessed on the tax books for as much as or more than it would bring at a cash sale, and some of it has been sold for less than it is assessed for taxes (R., pp. 127-8). The complainant offers 93 instances for 1927 when there were 1,914 different conveyances of property during that period. Affidavits are also offered sustaining the valuation placed on the Henrietta Mills property by establishing that the real value of said property is greater than the assessed value and showing that the stock of the Tanner estate and other holders of stock sold their stock in the Henrietta Mills at $150.00 per share at the very time that the complainant alleges that the stock was selling for less than $100.00 per share (R., pp. 114-115).

ARGUMENT.

The Constitution of North Carolina, Article V, Sec. 3, provides that laws shall be passed taxing by uniform rule all real and personal property according to its true value in money. Article VII, Section 9, provides that all taxes levied by any county, city or town shall be uniform and *ad valorem* upon all property in the same, except property exempted. The Legislature of North Carolina passed an Act in 1927 known as the "Machinery Act", being Chapter 71 of Public Laws of 1927, and being incorporated in North Carolina Code of 1927 as Section 7971, and said Act provides for a Board of Equalization and Review composed of the County Commissioners (7971 (88)), and also provides for a State Board of Assessment, composed of the Commissioner of Revenue, Attorney General and Chairman of the Corporation Commission. It is the intention of this Act (Sec. 7971 (46)) to have all property, real and personal, assessed at its true and actual value in money. The township list-takers and assessors make the assessments of all property in their respective townships and make returns on the abstract sheets as provided for under their oaths that they will assess every tract or parcel of land, or other real or personal property, at its true value in money and will endeavor to do equal justice to the public and to the taxpayers concerned (7971 (44)).

It is further provided in the Act that one who objects to the valuation placed on his property shall have the right, under proper notice, to have the valuation

as placed on his property reviewed by the Board of Equalization and Review, composed of the County Commissioners, and if dissatisfied with their decision, an appeal may be taken to the State Board of Assessment.

If the taxpayer is not satisfied with the decision of the State Board of Assessment, he may then pay his taxes under protest and sue to recover them back (N. C. Code, 1927, Sec. 7979, Appendix A).

The Legislature of North Carolina from time to time has passed laws relative to the raising of revenues commonly known as "Revenue Acts" and "Machinery Acts". It appears that the Legislature in the enactment of the various laws on this subject has not favored the extraordinary remedy of injunction to hinder the collection of revenues. The Legislature of 1927 enacted what is known as the Revenue Act of 1927, being Chapter 80 of the Public Laws of 1927 (N. C. Code, 1927, Sec. 7880, sub-sections 1 to 191). This Act relates to the collection of inheritance taxes, privilege taxes, etc., which are to be collected by the State of North Carolina, and Sec. 7880, sub-section 189 (Appendix B), provides that no court of the State shall entertain a suit for the purpose of preventing the collection of any tax under this Act and provides for the payment under protest with the right of suit for recovery. This section has been construed in Ragan *vs.* Doughton, 192 N. C. 500.

The Machinery Act of 1927 (Chapter 71, P. L. 1927, Section 7971, subsections 1 to 92, N. C. Code, 1927) relating to the collection of property taxes, provides for

the creation of various boards for the assessment, levy and collection of taxes by the political subdivisions of the State, such as counties, town, etc.

Section 7979, N. C. Code, 1927 (Appendix A), was enacted as a part of the Machinery Act of 1901, being Chapter 558, Sec. 30, of Public Laws of 1901. This section was codified in the Consolidated Statutes of 1919 as Section 7979 and has been in force since its enactment. This section was intended by the Legislature to afford to one who resists the payment of a tax a legal remedy and to restrict him to that remedy unless the case comes within the exceptions named in the Act. Furthermore, Section 858 of Consolidated Statutes of North Carolina provides that

> "No injunction may be granted by any court or judge to restrain the collection of any tax or any part thereof, or to restrain the sale of any property for the nonpayment of any tax, unless such tax or the part thereof enjoined is levied or assessed for an illegal or unauthorized purpose, or the tax assessment is illegal or invalid."

The primary object of the foregoing sections is to prevent, as far as possible, any unnecessary delay in the collection of revenues. Among some of the cases which have been construed by the Supreme Court of North Carolina which come under these sections are the following:

Mace *vs.* Commissioners, 99 N. C. 65;
McDonald *vs.* Teague, 119 N. C. 604;
Wilson *vs.* Green, 135 N. C. 343;
Teeter *vs.* Wallace, 138 N. C. 264.

In Teeter *vs.* Wallace, *supra*, in construing Chapter 558, Sec. 30, Public Laws of 1901 (now Sec. 7979, N. C. Code, 1927), the court says (at page 267):

> "This is a plain and adequate remedy and the provisions of the statutes have been construed by this Court to be mandatory and the statutory remedy to be exclusive, so far at least as the recovery of the tax, which has been paid, is concerned."

In Wilson *vs.* Green, *supra*, the Court says (at p. 348):

> "It would seem that these provisions of the law are comprehensive enough to afford ample protection to the taxpayer against any excessive valuation, discrimination or abuse of power by the taxing officers. A thorough and complete system of procedure is established by virtue of which the taxpayer may be heard upon all questions concerning the valuation of his property for taxation and be restored to any and all rights he may have lost by any irregular or fraudulent action of the assessors. * * * It is important that the true extent and scope of the powers of these revising tribunals should be clearly understood and stated because if they are possessed of the authority which, as we think, was intended to be conferred upon them, the plaintiffs have failed to avail themselves of the complete and adequate remedy which is thus afforded by the statute for the redress of their alleged grievances. The remedy is not only certain but is simple, speedy and efficacious, and by every rule of procedure and practice it must be pursued and exhausted before the complain-

ants can have recourse to the courts for equitable relief, and certainly before the court will extend its aid in preventing or retarding the collection of the public revenues."

In the decision of Mace *vs.* Commissioners, 99 N. C. 65, the court, at page 67, says:

"It is alleged in the complaint in general terms that the taxes, the collection of which is sought to be restrained, were 'levied for an illegal or unauthorized purpose'; but this is wholly insufficient. The constituent facts necessary to complete and show the alleged 'illegal or unauthorized purpose', must be alleged in the pleading, so that the Court can see from it what the purpose is and determine its character. The facts being alleged; it is the province of the Court to determine whether or not the purpose is 'illegal or unauthorized'.

"The learned counsel for the appellant contended on the argument that it appears from the pleadings that the tax levy was in excess of the limitations prescribed by the Constitution, and that the exceptive words, 'except such tax or the part thereof enjoined be levied or assessed for an illegal or unauthorized purpose', of the statute above cited, are broad enough to embrace, and do embrace, all taxes levied in excess of the constitutional limitation, or in any way illegally levied. This interpretation cannot be allowed. It would practically render the statute nugatory. It is seldom that the collection of taxes is resisted upon grounds other than that the levy of the same was in some way illegal. The exceptive words apply not to the levy or illegal levy of the taxes, but to the 'il-

legal or unauthorized' purpose of the levy. The collection of taxes shall not be interfered with, by injunction, unless the purpose of the same be 'illegal or unauthorized.' "

The foregoing cases, among many others to the same effect, have not been overruled by the Supreme Court of North Carolina, and therefore the complainant's contention that the adequacy of the remedy at law is doubtful, under authority of A. C. L. Ry. *vs.* Doughton, 262 U. S. 413 (at 226), is not well taken, for there is no absence of a decision on the statutes in the case at bar.

The injunction prayed in the Federal court was properly refused, since the complainant has an adequate remedy at law in the State courts by paying the tax alleged to be illegally exacted under protest and suing to recover it back.

Keokuk Bridge Co. *vs.* Salm, 258 U. S. 122, 66 L. ed. 496;

Dalton Adding Machine Co. *vs.* State Corp. Com., 236 U. S. 699, 59 L. ed. 797;

Singer Sewing Machine Co. *vs.* Benedict, 229 U. S. 481;

Boise Artesian Water Co. *vs.* Boise City, 213 U. S., 276;

Indiana Mfg. Co. *vs.* Koehne, 188 U. S. 681, 47 L. ed. 651;

Shelton *vs.* Platt, 139 U. S., 591;

Whitehead *vs.* Shattuck, 138 U. S. 146;

State R. Tax Cases, 92 U. S. 575;

Schaul *vs.* Charlotte, 118 N. C. 733;

Railroad *vs.* Lewis, 99 N. C. 62;
Express Co. *vs.* Charlotte, 186 N. C. 668;
Railroad *vs.* Cherokee County, 177 N. C. 86;
Brunswicke-Balke Co. *vs.* Mecklenburg County, 181 N. C. 386;
Blackwell *vs.* Gastonia, 181 N. C. 378.

The bill of complaint does not set out any special circumstances bringing the case within some recognized head of equity jurisdiction cognizable by the Federal court, such as the avoidance of a multiplicity of suits, prevention of irreparable injury, removal of cloud on title, fraud and collusion by the taxing authorities, or that the payment of the taxes would jeopardize its business. Some such allegations are necessary and must be supported by evidence, as will appear from the cases cited *supra.* Among many other cases to this effect are:

Indiana Mfg. Co. *vs.* Koehne, 188 U. S. 681;
Shelton *vs.* Platt, 139 U. S. 591;
Raymond *vs.* Chicago, etc., Co., 207 U. S. 20;
Johnson *vs.* Wells-Fargo & Co., 239 U. S. 234;
Ogden City *vs.* Armstrong, 168 U. S. 224.

See also:
37 Cyc. 1258;
26 R. C. L., paragraph 416, pp. 461-462.

The validity of the law under which the assessment was made is not questioned by the complainant, as it was in Ogden City *vs.* Armstrong, 168 U. S. 224, *supra,* and the manner or method of assessment is not chal-

lenged by the complainant, as it was in Johnson *vs.* Wells-Fargo & Co., 239 U. S. 234; Raymond *vs.* Chicago, etc., Co., 207 U. S. 20, and like cases.

The allegations of the bill of complaint as to the alleged illegal discrimination being denied by the answer, which is supported by substantial evidence, at most only raises an issue of fact. The District Court found as a fact that there was no unlawful or unjust discrimination against the complainant in the assessment of its real property or that the taxing authorities had violated either the Fifth or Fourteenth Amendments to the Federal Constitution, and this opinion was concurred in by the Circuit Court.

The rule is well settled that findings of fact concurred in by two lower courts will not be disturbed by the Supreme Court of the United States unless shown to be clearly erroneous.

American Bank & Trust Co. *vs.* Federal Reserve Board, 262 U. S. 643;

Brewer-Elliott Oil & Gas Co. *vs.* U. S., 260 U. S. 77;

Bodkin *vs.* Edwards, 255 U. S. 221;

Baker *vs.* Schofield, 243 U. S. 114;

L. E. Waterman *vs.* Modern Pen Co., 235 U. S. 88;

Lukenbach *vs.* W. J. McCahan Sugar R. Co., 248 U. S. 139.

This rule applies also where the evidence is taken before an examiner.

Causey *vs.* United States, 240 U. S. 399;

Gilson *vs.* United States, 234 U. S. 380.

The findings of fact by the State Board of Assessment, by analogy, should be given as much weight as the findings of an examiner. See—

Pittsburgh, C., C. & St. L. Ry. Co. *vs.* Backus, 154 U. S., 421.

The Federal courts are reluctant to interfere with the fiscal operations of the States, and unless it appears that bad faith, fraud or collusion is practiced by the authorities in the administration of their duties, equitable relief cannot be invoked. Errors of judgment or mistakes on the part of the administrative officers is not sufficient. There must be clear and convincing proof of intentional and systematic discrimination.

Southern Railway Co. *vs.* Watts, 260 U. S. 519;
Sunday Lake & I. Co. *vs.* Township of Wakefield, 247 U. S. 350;
C., B. & Q. Ry. Co. *vs.* Babcock, 204 U. S. 585;
People *ex rel.* Brooklyn R. R. Co. *vs.* State Tax Co., 199 U. S. 48;
Pittsburgh, C., C. & St. L. Ry. Co. *vs.* Backus, 154 U. S. 421;
Chicago, etc., Ry. Co. *vs.* Kendall, 266 U. S. 94;
Fordson Coal Co. *vs.* Moore, 31 F. (2nd) 606.

The jurisdictional allegation in complainant's bill of the inadequacy of the remedy at law is a mere inference or conclusion which must be made out by facts averred or proven (Shelton *vs.* Platt, 139 U. S. 591). Furthermore, the allegations of excessive valuation

and discrimination and that such alleged discrimination and over-valuation contravenes the Federal Constitution raises only an issue of fact, the establishment of which the complainant has failed in its proof.

The "due-process clause" of the Federal Constitution has not been violated by the defendants, as the North Carolina statutes provide for a notice and a hearing before the Board of Equalization and Review and for a hearing before the State Board or Assessment before the values become irrevocably fixed, and this is all that is necessary.

Hagar *vs.* Reclamation District, 111 U. S. 701, 28 L. ed. 569;

Londoner *vs.* City and County of Denver, 210 U. S. 373, 52 L. ed. 1103.

In the Londoner case, *supra,* the court, at page 385, says:

> "In the assessment, apportionment and collection of taxes upon property within their jurisdiction, the Constitution of the United States imposes few restrictions upon the states. In the enforcement of such restrictions as the Constitution does impose, this court has regarded substance, and not form. But where the legislature of a state, instead of fixing the tax itself, commits to some subordinate body the duty of determining whether, in what amount, and upon whom it shall be levied, and of making its assessment and apportionment, due process of law requires that, at some stage of the proceedings, before the tax becomes irrevocably fixed, the taxpayer shall have an opportunity to

> be heard of which he must have notice, either personal, by publication, or by a law fixing the time and place of the hearing."

The complainant failed to appear before the Board of Equalization and Review within the time provided by statute, but availed itself of a hearing before the State Board of Assessment, and obtained substantial relief, which hearing is sufficient under the due-process clause. Furthermore, the statutes also provide for a further test of the propriety of the valuation in the State court by paying the tax under protest and suing to recover it back. This alone would have supplied due process.

> Hettrick *vs.* Lindsay, 265 U. S. 384; 68 L. ed. 1065.

Nor was there, on the merits, any violation of the "equal-protection clause". The findings of the District Court with reference to the assessed value of the complainant's property as compared with its value during the period since 1920 and as compared with the values in 1927 of other mills in the same county, supported by the refusal of the three judges to interfere, substantiates its conclusion that there was no discrimination in fact. The opinion of Judge Webb (R., p. 133) reads, in part, as follows:

> "I can find nowhere in my careful persual of the pleadings and the affidavits anything that shows that the action of the taxing authorities of Rutherford County, North Carolina, has violated either the Fifth or the Fourteenth Amend-

ments. But in addition to this and stronger I do find that the complainant in this matter had in the State of North Carolina an adequate remedy at law for the redress of its alleged wrongs. The laws of North Carolina give ample machinery * * * in the State Courts for just such discriminations as are alleged by the complainant. The complainant pursued the methods marked out by the State laws challenged in this case, but rather than to go further and test its rights in the State Courts it has come to this Federal Tribunal * * *. This Board (State Board of Assessment), composed of distinguished and high-minded men well versed and learned in the proper assessment of property in North Carolina, gave to the complainant a full, fair and open hearing, at which hearing both sides were represented by able counsel, and after carefully going into the matter the State Board reduced the assessed value of the complainant's property from $2,124,235.00 to that of $1,849,235.00. It appears that this amount is the smallest upon which the complainant has been called upon to pay taxes for the past six or seven years."

"The complainant certainly had its day in court and *and* if dissatisfied with the action of the State Board then the State laws plainly mark out the remedy which it had for the redress of its grievances."

In further support of the defendants' contention that the equal-protection clause of the Constitution has not been violated, See—

Chicago Great-Western Ry. Co. *vs.* Kendall, 266 U. S. 90, 69 L. ed. 183;

Southern Ry. *vs.* Watts, 260 U. S. 579; 67 L. ed. 375;

Baker *vs.* Dreusedow, 263 U. S. 137, 68 L. ed. 212.

The complainant in its briefs filed in the District Court and in the Circuit Court devotes considerable attention to the proposition that it would be subject to a multiplicity of suits due to the quadrennial assessment under the State laws and apparently relies on this as one of the grounds for equitable relief. There is no allegation in the bill of complaint raising an issue on this point and the complainant, being required to show more than a mere possibility of repeated litigation, and that the danger to which it is exposed is a real one, should be required to set out those facts clearly in its bill and to support the allegation by evidence.

This question is not raised in the petition for writ of certiorari, and, on authority of the decisions, this Court limits its review to errors assigned in the petition.

Alice State Bank *vs.* Houston Pasture Co., 247 U. S. 240;

Montana Mining Co. *vs.* St. Louis, 186 U. S. 31;

Hubbard *vs.* Todd, 171 U. S. 474.

Furthermore, a decision at the beginning of the quadrennial assessment period would be *res judicata* during the next three years.

Freeman, Judgments (5th ed. 1925), Vol. 2, Secs. 851-852;

City Council of Augusta, Ga., *vs.* Timmerman, 233 Fed. 216;
Express Co. *vs.* Seibert, 44 Fed. 310;
Boise Artesian Water Co. *vs.* Boise City, 213 U. S. 276.

Conclusion.

It may be conceded that in exceptional cases one resisting the payment of a tax alleged to be illegally exacted by a State or political subdivision thereof may invoke relief on the equity side of the Federal courts. But for cogent reasons of public policy, derived from the necessity of uninterrupted revenues, equitable relief is limited or denied unless the case comes within one of the recognized heads of equity jurisdiction. In this respect the complainant has failed except by mere jurisdictional allegations, inferences or conclusions which it has failed to prove.

The complainant challenges the construction of Section 267 of the Judicial Code as applied by the lower courts. It cannot be assumed that a decision of this Court would settle for all time the application of Section 267 of the Judicial Code to cases arising in the various jurisdictions, for the rule will have to be applied to each case as it arises. The facts are seldom similar and the application of the rule largely depends on the State statutes and their construction by the State supreme courts. But the appellees respectfully submit that this case, considered in the light of the pertinent statutes and the State decisions, should be

dismissed, as the complainant has a plain, complete and adequate remedy at law.

Moreover there has been no violation of the "due-process" clause or the "equal-protection" clause of the Federal Constitution by the appellees in the valuation and assessment of the complainant's property. The local Board of Assessors is the same board that assessed all other property of persons similarly situated in the same township of the property of the complainant and the Board of Equalization and Review is the same board that reviews the assessment of all property of Rutherford County and the State Board of Assessment is the same board that reviews and equalizes the assessments of all property in the State of North Carolina. The complainant failed to appear before the County Board of Equalization and Review within the time prescribed by statute, but pursued its remedy and availed itself of a hearing before the State Board of Assessment and obtained relief by having the valuation placed on its property by the local board reduced in the amount of $275,000.00. This alone is sufficient to controvert the charge that the complainant did not have a fair and open hearing, and that is all that is necessary.

Furthermore, the judgment of the lower courts should be affirmed by this Court dismissing the bill of the complainant on the merits. It has failed to make good its allegations and the District Court found as a fact that there was no unlawful discrimination against the complainant in the valuation of its property and

no violation of the Federal Constitution and this judgment was concurred in by the Circuit Court.

Briefly, the judgment dismissing the bill should be affirmed for that:

1. The complainant has a plain, adequate and complete remedy at law;

2. There has been no violation of the Fifth Amendment to the Constitution of the United States;

3. There has been no violation of the Fourteenth Amendment to the Constitution of the United States;

4. Upon the merits, the complainant is not entitled to the relief prayed.

Respectfully submitted,

CLYDE R. HOEY,

Counsel for Defendants-Appellees.

FRED D. HAMRICK,
N. C. HARRIS,
J. S. DOCKERY,

Of Counsel.

APPENDIX A.

7979. Remedy of taxpayer for unauthorized tax.—Unless a tax or assessment, or some part thereof, be illegal or invalid or assessed for an illegal or unauthorized purpose, no injunction shall be granted by any court or judge to restrain the collection thereof in whole or in part nor to restrain the sale of any property for the nonpayment thereof; nor shall any court issue any order in claim and delivery proceedings or otherwise for the taking of any personalty levied on by the sheriff to enforce payment of such tax or assessment against the owner thereof. Whenever any person shall claim to have a valid defense to the enforcement of a tax or assessment charged or assessed upon his property or poll, such person shall pay such tax or assessment to the sheriff; but if, at the time of such payment, he shall notify the sheriff in writing that he pays the same under protest, such payment shall be without prejudice to any defenses or rights he may have in the premises, and he may, at any time within thirty days after such payment, demand the same in writing from the treasurer of the state or of the county, city, or town, for the benefit or under the authority or by request of which the same was levied; and if the same shall not be refunded within ninety days thereafter, may sue such county, city, or town for the amount so demanded, including in his action against the county both state and county tax; and if upon the trial it shall be determined that such tax or any part thereof was levied or assessed for an illegal or unauthorized purpose, or was for any reason invalid or excessive, judgment shall be rendered therefor, with interest, and the same shall be collected as in other cases. The amount of state taxes for which judgment shall be rendered in such action shall be refunded by the state treasurer (Rev., s. 2855; 1901, c. 558, s. 30).

APPENDIX B.

7880(189). Taxes to be paid.—No court of this State shall entertain a suit of any kind brought for the purpose of preventing the collection of any tax imposed in this act. Whenever a person shall have a valid defense to the enforcement of the collection of a tax assessed or charged against him or his property such person shall pay such tax to the proper officer, and notify such officer in writing that he pays same under protest. Such payment shall be without prejudice to any defense or rights he may have in the premises and he may, at any time within thirty days after such payment, demand the same in writing from the Commissioner of Revenue of the State if a State tax or if a county, city or town tax, from the treasurer thereof, for the benefit or under the authority or by request of which the same was levied; and if the same shall not be refunded within ninety days thereafter, may sue such official for the amount so demanded; and if upon the trial it shall be determined that such tax or any part thereof was levied or assessed for an illegal or unauthorized purpose, or was for any reason invalid or excessive, judgment shall be rendered therefor, with interest, and the same shall be collected as in other cases. The amount of State taxes for which judgment shall be rendered in such action shall be refunded by the State (1927, c. 80, s. 464).